

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Marcus Andre Harvey**
Docket No. **278524**
L.C. No. **90-004921-01**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),
orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction because the defendant cannot appeal the denial or rejection of a successive motion for relief from judgment. See MCR 6.502(G)(1). Regardless of the title placed on this last motion it constituted a motion for relief from judgment. See MCR 6.501. Because how to challenge a criminal conviction is a matter of procedure, the Supreme Court was within its authority to adopt the motion for relief from judgment rule. Finally, *People v Kimble*, 470 Mich 305(2004) is irrelevant to defendant's case for two reasons. *Kimble* was decided under the statutory guidelines. Defendant was sentenced under the judicial guidelines. Second, *Kimble* involved a direct appeal. This appeal is not a direct appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 21 2007

Date

Sandra Schultz Mengel
Chief Clerk